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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Children and juveniles in detention

Report of the Secretary-General submitted pursuant to Commission on Human Rights decision 1997/106

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Introduction

1. The present report is submitted by the Secretary-General in accordance with Commission on Human Rights decision 1997/106 of 11 April 1997, entitled "Human rights in the administration of justice, in particular of children and juveniles in detention". In that decision the Commission, inter alia, requested the Secretary-General to submit an updated report at its forty-fourth session and decided, without a vote, to resume, on a biennial basis, consideration of this question at its forty-fourth session under the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment".

2. The Secretary-General invited Governments, by note verbale of 5 August 1997, to provide relevant information. As of 1 December 1997, the Governments of Guatemala and Kuwait had sent replies. The present report also contains information from the Governments of Angola, Chile, Cuba, Guinea, Mauritius, the Philippines, Swaziland and Turkey, whose replies could not be included in the previous report of the Secretary-General (E/CN.4/1997/26) because of their late arrival.

3. Requests for information were also sent, on the same date, to the relevant human rights treaty bodies, the specialized agencies and intergovernmental and non-governmental organizations. As of 1 December 1997, information had been received from the Department of Humanitarian Affairs, the Department of Public Information, the Division for Palestinian Rights, the Economic Commission for Latin America and the Caribbean, the International Court of Justice, the League of Arab States and the Howard League for Penal Reform.

4. The Department of Humanitarian Affairs, the Division for Palestinian Rights, the Economic Commission for Latin America and the Caribbean and the International Court of Justice stated that they did not have relevant information to provide. The full texts of all communications, as well as the publications mentioned in this document, are available in the files of the Office of the United Nations High Commissioner for Human Rights.

I. INFORMATION RECEIVED FROM GOVERNMENTS

Angola

[Original: French]
[25 November 1997]

5. In Angola there are no children in detention and, despite all the country's well-known difficulties, no effort has been spared to ensure that human rights are respected during a period of detention, which is always as short as possible.

Chile

[Original: Spanish]
[13 March 1997]

6. On 26 January 1990 Chile signed the Convention on the Rights of the Child and on 14 August of the same year it was promulgated as a law of the Republic of Chile. The Convention on the Rights of the Child was thus incorporated into the legal system of the country, so that the rules and obligations that it contained were given constitutional status.

7. The Government of Chile has given particular attention to the need to bring legislation on minors into line with the Convention on the Rights of the Child. Thus, with a view to achieving this objective, various draft laws, including bills on filiation, adoption and sexual offences, are now going through the legislative process, while two draft laws, a bill on juvenile delinquency and guardianship and a bill on family courts, are in the final stage of examination.

8. In the draft bill on juvenile delinquency and guardianship, with regard to the responsibility of juveniles for offences against the criminal law, the bill will be in line with the international norms and recommendations laid down in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The aim is to establish a system of juvenile responsibility which replaces the concept of "a non-imputable juvenile incapable of answering for his own acts" by the idea of "a juvenile responsible for the acts he performs".

9. The law on criminal procedure for juveniles will contain all the guarantees required in this particular field: for instance, one of the most important features of this procedure is the nature of the accusatory proceedings, which should be oral, held without delay, adversarial, comprehensive, held in public and provide the right to a proper defence. Furthermore, it will incorporate the principle laid down in rule 13 of the Beijing Rules, which specifically states that detention pending trial shall be used only as a measure of last resort. In addition, it is intended to exclude any indirect way of depriving a juvenile of his liberty for behaviour that would not be punishable in the case of an adult and to lay down a wide range of measures providing for specific alternatives to deprivation of liberty, which will be a measure used for the shortest possible period of time. Only in a case of serious bodily assault would the judge be able, if he thought it necessary in that particular case, to apply the measure of deprivation of liberty.

10. The family and juvenile courts envisaged by the reform programme are a response to three factors. First of all, they are intended to satisfy a requirement of international human rights law, which is binding on Chile under the terms of its Constitution, to establish specialized courts to deal with matters involving the interests of children and adolescents. Furthermore, the establishment of such courts is in line with one of the main principles of the Government's programme, which recognizes, among other factors, that the

process of modernization of the country is undergoing, by changing patterns of mobility, has an adverse effect on some priority groups and that, consequently, the State needs to give special consideration to the family. Thirdly, this concern for the family involves encouraging a sense of community, which the process of modernization often tends to weaken. Thus, the family courts satisfy the need to move towards a specialized system for the administration of justice that involves several alternative ways of resolving conflicts. The matters for which the family courts will have jurisdiction will include adoption, filiation, maintenance, protection, juvenile delinquency and violence within the family.

Cuba

[Original: Spanish]
[29 November 1996]

11. The Constitution of the Republic proclaims that "children and young persons shall receive special protection by the State and society. It is the duty of the family, schools, State agencies and social and mass organizations to pay special attention to the integrated development of children and young persons".

12. In addition, other norms and codes, especially the Family Code, the Children and Young Persons Code and the Civil Code, have gradually perfected the Cuban system of juvenile justice in the course of time.

13. National practice has, for its part, generated interesting initiatives enabling the priority attached to this matter to be given effect. It is, for example, worth noting such measures as the bringing into force from 1982 of an innovative system for the care of minors with behavioural disorders, and the exemption of minors under 16 years of age from criminal prosecution (Decree Law No. 64/82); the creation in 1984 of a national network of social welfare centres for minors who are without family support or abandoned, which endeavours as far as possible to provide conditions of life similar to those of the home; and the establishment in 1986 of a National Commission for Prevention and Social Welfare with the purpose of strengthening work for the prevention and suppression of criminal behaviour.

14. In addressing and dealing with this important issue, the international instruments of the United Nations relating to children and young persons have been observed, compared and adapted to national circumstances. Particular consideration was given to the United Nations Guidelines for the Prevention of Juvenile Delinquency, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

15. It is important to note that under the aforementioned Decree Law No. 64 minors are not tried by courts of law but dealt with by councils for the administration of juvenile affairs, consisting of multi-disciplinary panels of sociologists, doctors, jurists, psychologists and teachers, who decide collectively on the appropriate educative measures and therapeutic treatment to be followed in each case.

16. The law in general offers a broad spectrum of measures for the reorientation or rehabilitation of minors, ranging from the provision of direct care by the relevant institutions, together with the parents, guardians or other persons having custody, to the measure of confinement, which is applied to minors only in exceptional and extreme cases where there is a risk of infringements of the law with serious implications for society.

17. A special safeguard for minors consists in the observance of the following principles: the presumption of innocence; privacy and respect for physical and mental integrity; the participation of the legal representatives or guardians in all proceedings requiring the presence of the minor; a minimum period of police custody of minors, who are to be kept in appropriate facilities and always separate from adults; proceedings taken with respect to a minor in the course of an investigation are to be entered in a record that is signed by the legal representatives or guardians, who are to be handed a copy thereof as a procedural safeguard and evidence of their participation; the attendance during all proceedings at police stations of juvenile prevention officers, who are professionals responsible for ensuring that the minor and his legal representatives or guardians receive special treatment; minors are to be committed to rehabilitation centres only in last resort, after measures and methods of treatment within the family, the school and the community have been exhausted; all measures must be determined by the competent bodies and on the basis of a decision reached in accordance with the law; and such measures may be challenged at any time.

18. In Cuba, following the most advanced thinking in criminal and penal matters, the legal system provides different treatment for prisoners aged 16 to 20 years, and this is also applicable to young persons who have not reached 30 years of age. In particular, there are special plans for sports, cultural and recreational activities; schooling until the completion of basic education is ensured and the minor's involvement in productive labour is guaranteed as ways of fostering correct behaviour and work habits.

Guatemala

[Original: Spanish]
[3 October 1997]

19. Article 20 of the Political Constitution of the Republic of Guatemala which deals with matters relating to minors states that:

> "...
>
> "Minors who contravene the law may not be charged with an offence. Their treatment must aim to give them a full education appropriate to their age ... . Minors whose conduct violates the criminal law shall be cared for in specialized institutions and by specialized personnel.
>
> "They may not on any ground be confined in a gaol or place of detention intended for adults. This question shall be regulated by a special law."

20. Decree No. 17-73 of the Congress of the Republic of Guatemala (Penal Code), specifies, in chapter III, grounds for exemption from criminal liability. Moreover, chapter I, article 23, specifically states that the following may not be charged with an offence: minors and persons who, at the time the act or omission were, because of mental disturbance, retarded mental development or temporary mental disorder, unable to understand what they were doing, except in cases where such disorder was brought on intentionally.

21. Exemption from liability for an offence does not, however, exempt persons from liability under article 116 of the Penal Code, which states that persons who may not be charged with an offence incur civil liability for their unlawful deeds and acts; if the minor or incompetent person is insolvent, such liability is incurred by those exercising parental authority or legal guardianship. The Civil Code specifies the age at which, according to the law, a person assumes rights and obligations and consequently becomes liable for the unlawful deeds and acts with which he may be charged and are described as offences under the law.

22. Article 30 of the Minors Code in force states that minors are persons who have not reached the age of 18. Likewise, article 8 of the Civil Code states that persons acquire legal capacity on attaining their majority, namely, at the age of 18. Minors who commit a criminal offence, depending on its nature, may be subject to corrective measures in suitable centres for minors by specialized personnel, but in no case in a jail or place of detention intended for adults. The Minors Code (Decree No. 78-79) specifies the procedure and corrective measures that are applicable to minors who have committed a criminal offence. However, as this instrument does not contain provisions ensuring that the measures applied are the most appropriate, judges are granted broad discretionary powers in the matter, including the power to decide what type of measures should be applied to minors and their duration.

23. In this connection it should be noted that the "abnormal situation doctrine" applies with regard to the establishment of standards applicable to children and adolescents from so-called "marginal" segments of society. Boys, girls and young persons in conflict with the law are regarded as minor lawbreakers or as persons displaying abnormal tendencies, to whom discretionary measures - many of them involving placement in institutions thereby separating children from their environment - are applied. It is therefore clear that existing legislation on children and adolescents in Guatemala suffers from certain shortcomings that make it difficult to provide complete protection for boys, girls and young persons.

24. In July 1997, according to the statistics compiled by the judiciary's Children and Young Persons Public Defence Unit, a total of 317 boys and 44 girls were being cared for in various treatment and rehabilitation centres for minors, for which the Department of Social Welfare of the Office of the President of the Republic is responsible. No distinction is made in these centres between minors at risk (foundlings or ill-treated children) and boy, girl and other young offenders, which raises serious problems as regards the situation of children. Only children who have committed serious offences are placed in specialized centres.

25. In view of the problems encountered at treatment and rehabilitation centres for minors, the Department of Social Welfare will, at the end of this year, embark upon the restructuring of these centres in order to improve the readaptation and rehabilitation within society of boys, girls and young persons at risk, as well as those in conflict with the law. This restructuring will result in the following improvements:

(a) New staff, on the basis of a highly technical selection process;

(b) New infrastructure for treatment and rehabilitation centres for minors, for which an allocation of 3 million quetzales has been requested, and which will make it possible to invest more in rehabilitation schemes, apprentice workshops, machinery and raw materials;

(c) New technology, entailing the establishment of computer systems satisfying various demands connected with the activities of treatment and rehabilitation centres for minors and thereby providing access to the registers of juvenile courts so that proceedings against minors in conflict with the law can be speeded up; and

(d) New programmes for the treatment, readaptation and rehabilitation within society of boys, girls and young persons in conflict with the law as well as those in separate risk-protection rehabilitation centres.

26. Conscious of the problems of children and other factors that explain why children constitute a highly vulnerable social group, a number of non-governmental organizations and public bodies got together in 1989 and established the Commission for the Convention on the Rights of the Child (PRODEN). In 1991, this Commission became part of the Human Rights Department. Since that time, one of PRODEN's main tasks has been to prepare a body of legal provisions geared to the problems of children that would offer alternative corrective measures in accordance with the nature and age of minors. This task was coordinated by the Human Rights Department and resulted in the creation of the post of Children's Ombudsman who, in February 1995, submitted to the President of the Congress of the Republic, the draft code on childhood and adolescence. Subsequently, on 25 January 1996, a second draft was submitted.

27. On 11 September 1996, the Congress of the Republic of Guatemala approved, with the agreement and consensus of all political parties, Decree No. 78-96, entitled "Code on Childhood and Adolescence", which will enter into force on 27 March 1998. In this connection, it should be noted that the Code on Childhood and Adolescence establishes the procedure applicable to all young persons between 12 and 18 years of age in conflict with the law. Its main features are measures to ensure the comprehensive protection of young persons and their best interests, their all-round education and, as subjects of law, reinsertion into their families and society. This new Code, which is intended to ensure respect for the human rights of young persons who contravene the law, also takes into consideration their special situation as minors. To this end, the State is placed under the obligation to bring proceedings against young persons in specialized bodies

and to provide them with the assistance of a public or private defence lawyer from the very outset of the investigation; in other words, young persons will be questioned only in the presence of their defence lawyer.

28. Another of the principles underlying the Code on Childhood and Adolescence is reflected in the move to replace imprisonment by other measures, and to use imprisonment only as a last resort or for the shortest time possible. This will be facilitated by a number of measures designed to reduce the length of proceedings if the nature of the offence so allows. Furthermore, at the time when it is being determined whether a young person committed or participated in an act regarded as an offence under the Penal Code, the judge may order the application of socio-educational measures (such as performance of community service or making amends to the aggrieved party), rehabilitation or supervision, or yet, where necessary, the deprivation of liberty either in the offender's own home or in specialized centres.

29. Moreover, the Supreme Court of Justice, through the Public Defence Service, has created a specialized unit for the defence of children and young persons in conflict with the law whose lawyers receive appropriate training. The sole function of these lawyers is to defend minors who are unable to pay for the services of a defence lawyer. The Code on Childhood and Adolescence is a highly progressive legal instrument that is channelling the children and young persons of Guatemala, regardless of their situation, in the direction of the complete development of their personalities in a context of freedom, education, equality, justice, security and solidarity.

30. The State of Guatemala expresses the hope that the promulgation and application of the Code on Childhood and Adolescence will be a milestone in the process of improving the dramatic conditions of Guatemalan children and contribute to the realization of the obligations assumed by the State under international instruments as well as those under the Peace Agreements.

Guinea

[Original: French]
[24 March 1997]

31. The State of Guinea attaches great importance to the protection and promotion of the rights of the child in the administration of justice. Act No. 022/CTNR, promulgated by Order No. 109/PRG of 5 July 1986, established the juvenile courts. These courts are exclusively competent to deal with all offences committed by minors. The juvenile courts are administered by specialized magistrates with a particular interest in matters relating to children. They have a preventive and educative role:

(a) The juvenile judge has an essentially educative role since he may not hand down penal sentences. During the examination of a case, he must make all the necessary inquiries to learn about the minor's character and to identify appropriate means for his rehabilitation. He is not bound to respect the requirements of the Penal Code;

(b) The juvenile court is competent to deal with all criminal offences committed by minors under 18 years of age. The juvenile court may decide upon measures of assistance and rehabilitation, and can also pronounce sentences of

imprisonment. The hearing always takes place in chambers and the presence of counsel for the minor and of the government procurator is compulsory. The minor is allowed to speak last;

(c) The juvenile assize court is competent to try minors aged 16 to 18 years who have committed one or more crimes. Detention is not possible for a minor under 13 years of age, whatever the offence committed.

32. Public access must be restricted in all these courts, and only the minor's parents, the claimant for criminal indemnification, the witnesses and social or religious organizations are to attend the hearings.

33. After the independence of Guinea, and more precisely 1961, the date of promulgation of the Code on Persons and Liberalities, Guinean law made no provision for children at risk. Between 1967 and 1968, the two rehabilitation centres for juvenile offenders in the Conakry area were transformed into schools and no other centre of that kind was established. The abolition of those centres complicated the task of the judge, who was left with only two options, either to imprison or to release the minor. To remedy that shortcoming, the State of Guinea, by Act No. 22/CTRN of 5 July 1986, set up new courts to deal with all legal proceedings concerning minors. Unfortunately, despite this new initiative, no action has been taken to build centres of detention or placement for minors. Convicted and imprisoned minors live among adults, with all the adverse effects that has for their reintegration. The young people receive no guidance once they are released because there are no structures for their rehabilitation and they mostly remain vulnerable and potential offenders.

34. It should therefore be indicated that, despite the existence of good legislation for the protection of children at risk in Guinea, enforcement is difficult. The assistance of the United Nations would be very much appreciated in the building of detention centres for minors and the training of specialized staff to provide guidance.

Kuwait

[Original: Arabic]
[11 November 1996]

35. The practices applied in the State of Kuwait are fully consistent with Commission on Human Rights resolution 1996/32, and particularly paragraphs 11, 12, 13 and 14 thereof, since children and juveniles enjoy special protection and care under the terms of the Juveniles Act No. 3 of 1983, which constitutes the general framework within which juveniles are protected from delinquency and, if necessary, rehabilitated. The said Act takes care of the application of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, as well as the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). Kuwait applies the principle that depriving children and juveniles of their liberty should be used only as a measure of last resort and for the shortest appropriate period of time, particularly before trial. During their detention, movement or appearance before the Department of Public Prosecutions or the courts, they are separated from adult detainees.

36. The State of Kuwait shows great concern for the reform and rehabilitation of juvenile delinquents, with a view to their social reintegration as upstanding members of the community, in accordance with carefully studied plans prepared by the Ministry of Social Affairs and Labour.

Mauritius

[Original: English]
[19 December 1996]

37. The Government of Mauritius sent a copy of the Child Protection Act 1994 proclaimed on 1 April 1996, extracts of the Criminal Procedure Act and a copy of the Juvenile Offenders Act of 6 April 1935. As regards proceedings in criminal matters, the Mauritian law provides that they may be held in camera to safeguard the welfare of persons under the age of 18. Pursuant to section 249 (6) of the Criminal Code, prosecution for sexual offences is instituted only with the consent of the Director of Public Prosecutions.

Philippines

[Original: English]
[19 November 1996]

38. The promotion and protection of all the rights of the child and juveniles in the administration of justice is part of the continuing advocacy of the Philippines Government. The United Nations Guidelines for the Prevention of Juvenile Delinquency, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty are disseminated through training, dialogues and discussions conducted by the Department of Social Welfare and Development, for its personnel and social workers and the members of the juvenile justice system.

39. Advocacy is continuing for two bills pending in the Philippine Congress: one is for the restoration of Child and Family Courts and the other is on a comprehensive juvenile justice system. These proposed bills will ensure the protection of children, both victims and offenders, from the time of their arrest/contact with law enforcers up to their treatment and post-care.

40. Advocacy with local government units and other authorities is continuously done to ensure that juveniles are separated from adults during confinement. This advocacy has resulted in the donation by the local government executives of Pasay City of two floors of their administration building for youth offenders. Moreover, a sub-task force of the Philippine Council for the Welfare of Children, in coordination with Toyota Motors Corporation, has secured the delivery of two truckloads of wood for the provision of at least separate bunk beds for youth offenders at the Pasay City jail, which is the first area to be provided with such equipment. The cities of Muntinlupa and Kalookan likewise established separate detention cells for their minor offenders.

41. The Philippine Department of Social Welfare and Development issued a memorandum to all social workers implementing services for youth offenders to

conduct bimonthly visits to jails to be able to monitor whether minors are confined therein and facilitate their release on recognizance and case management.

42. Researches are being undertaken under the auspices of the Philippine Council for the Welfare of Children to determine the age of discernment as a basis for the amendment of the law to increase the age of criminal liability of a child, and the Philippine Action for Youth Offenders to determine the situation of youth offenders on detention, for law reform and policy and programme development.

43. A youth offender, after arrest and after being brought under the supervision of the Department of Social Welfare and Development, is made to understand the consequences of and take responsibility for his action. Whenever there is civil liability, the youth offenders are encouraged to pay the damages. Parent-child counselling is provided.

44. Finally, it should be recalled that the Philippines requested, and was granted, technical assistance in the administration of justice. A United Nations needs assessment team visited the country in July 1996 and consulted authorities involved in the justice system.

Swaziland

[Original: English]
[11 November 1997]

45. Swaziland is committed to the rights of children and the welfare of juveniles who may happen to be in detention. Evidence of this commitment is the ratification of the Convention on the Rights of the Child in 1995.

46. Children in Swaziland are regarded by the Government as an integral part of the society. Consequently, Government's policy is to expose children to school education with a view to assisting them to be enlightened citizens whose contribution to nation-building and economic development will be meaningful and consequential to the nation as a whole. To this end Government continues to build schools and makes colleges available to Swaziland's children.

47. The Government has also become sensitive to cases of children in detention or imprisoned for criminal activities and does everything possible to guarantee them correctional treatment and their reintegration into society in order to contribute to their growth as citizens.

48. The whole judicial process is guided by the number, the gravity and the nature of the crimes committed. Although the number of judicial officers involved may be a significant factor, the longest delay, in extreme cases, will take up to eight weeks to complete.

49. Swaziland, as a developing country, does not have facilities such as separate accommodation for juveniles in the correctional institutions. Nevertheless, all attempts are made to accommodate juveniles separately from

hardened criminals. Whilst in detention, the skills of juveniles are improved through education and rehabilitation in order to facilitate their reintegration in the society when released.

50. Swaziland believes that, having the interests of all children in mind, there is still room for improvement. As a developing country with very scarce resources, Swaziland warmly hopes that the United Nations will consistently provide economic assistance in the field of juvenile justice.

Turkey

[Original: English]
[18 November 1996]

51. Law No. 2253 on the "Organization and Procedures for Proceedings of Juvenile Courts" regulates the procedures concerning the treatment of juvenile delinquents. Article 11 of the Law states that a juvenile delinquent who is below the age of 11 at the time of the commission of the crime cannot be prosecuted or convicted. If the crime normally carries a sentence of imprisonment longer than one year or heavy punishment, the delinquent shall be subject to the measures enumerated in article 10 of the Law. These measures may not be applied to those delinquents below the age of 11 if the parents, guardians or caretakers take adequate steps for their fostering.

52. Article 10 stipulates that juvenile delinquents who cannot be prosecuted or convicted shall be referred to:

(a) The parents, legal guardians or any relatives who take the responsibility of care therefor;

(b) Foster parents;

(c) Special institutions for child care and protection;

(d) State enterprises or skilled workmen or craftsmen that can offer employment opportunities;

(e) Rehabilitation centres or State or private hospitals offering special education to children who so require.

53. Before the decision to convict is taken, an investigation is conducted about the family, social conditions, upbringing and educational backgrounds of the juvenile delinquent between the ages of 11 and 15. The investigation is carried out by social workers, psychologists and psychiatrists employed by juvenile courts (article 20). If this investigation does not deem punishment necessary, the juvenile delinquent is subjected to the provisions of article 10.

54. It is stated in article 19 that, without hampering the implementation of the measures enumerated in article 10, during prosecution or trial, no decision to arrest can be taken concerning juveniles, who have committed crimes which require punishment of less than three years' imprisonment.

55. Article 36 states that juvenile delinquents who are between the ages of 11 and 15 at the time of the commission of the crime, and those who are below the age of 18 at the time of the decision to punish, are sent to detention centres (centres for the rehabilitation of juvenile offenders).

56. In accordance with article 25, trials of juvenile delinquents are held in camera. Their lawyers, parents and legal guardians, and social workers, psychologists and psychiatrists employed by the juvenile courts may be present in the courtroom.

57. Action is being taken to increase the number of juvenile courts in Ankara, Istanbul, Izmir and Trabzon.

58. The establishment of an advisory board on legal issues concerning juvenile delinquency was approved in May 1995. The advisory board is entrusted with the task of policy-making on juvenile institutions, rehabilitation programmes and legislation in the light of international instruments, including the Convention on the Rights of the Child, the Riyadh Guidelines, the Beijing Rules and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

59. Taking into consideration the need for statistical data on juvenile delinquency in Turkey, work has been initiated on the establishment of an information network on juvenile delinquency, with the support of the State Planning Organization and the State Institute of Statistics.

60. A pilot project has been launched in the Ankara Juvenile Detention Centre in order to pursue the applicability of planned protection and rehabilitation programmes. The project is supervised by a Rehabilitation Commission, set up within the Ankara Juvenile Detention Centre. The organization of a seminar is under way, in cooperation with UNICEF, for the administrators of this institution and the juveniles therein, with the aim of providing extensive information on the rights and liberties set out in the Convention on the Rights of the Child.

61. Seminars for administrators and personnel responsible for juvenile detention centres are scheduled to take place at the end of 1997. These seminars will focus on juvenile delinquency, child psychology and education.

62. A protocol was signed on 23 February 1995 between the General Directorate of Prisons and Detention Centres (Ministry of Justice) and the General Directorate of Apprenticeship and Training (Ministry of National Education), and the Turkish Confederation of Artisans and Craftsmen and the Foundation for the Promotion of Vocational Training and Small Enterprises. The protocol focuses on the organization of vocational training activities in juvenile detention centres, training activities in juvenile detention centres and the continuation of such activities after the juvenile offender's release by offering h[illegible] employment opportunities.

63. Moreover, aware of the need to carry out activities related to juvenile delinquents in a more efficient and effective manner, a new section, named

Supervision, Training and Reform in Children's Affairs, was set up under the General Directorate of Prisons and Detention Centres within the Turkish Ministry of Justice in 1993. This section undertakes activities pertaining to the protection and rehabilitation of children below the age of 18 under detention in closed prisons or detention centres.

64. Work has also been initiated on a larger scale to review the existing legislation in line with the principles and provisions set forth in the Convention on the Rights of the Child to which Turkey is a party.

II. INFORMATION RECEIVED FROM UNITED NATIONS BODIES

Department of Public Information

[Original: English]
[17 October 1997]

65. The high crime rates among youngsters and the inadequate conditions in which they are detained have prompted the international community to contemplate the special needs of children and juveniles while deprived of their liberty, in particular their vulnerability to various forms of abuse, injustice and humiliation. The United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, which have been convened every five years since 1955, regularly focus on issues such as juvenile delinquency and detention. At these meetings, Governments were called upon, inter alia, to provide training in human rights and the administration of justice, including juvenile justice, to all judges, lawyers, prosecutors, social workers and other professionals concerned with juvenile justice matters, including police and immigration officers.

66. In raising public awareness of human rights issues, the United Nations Department of Public Information (DPI) is responsible for initiating and coordinating public information programmes and activities within the World Public Information Campaign for Human Rights, in collaboration with the Office of the High Commissioner for Human Rights and other United Nations partners, and with the Centre for International Crime Prevention at the United Nations Office at Vienna. In this respect, the Department carries on a multimedia approach to ensure the effective coverage of United Nations action as well as worldwide distribution of relevant public information materials on human rights.

67. The multimedia approach of the Department in the field of human rights includes the production of print material such as brochures, pamphlets, backgrounders, booklets, fact sheets, feature articles, posters and information kits regarding United Nations work in the field of human rights. The print materials, as well as press releases and United Nations documents, are distributed electronically by DPI in English, French and Spanish to the network of United Nations Information Centres (UNICs) and Services (UNISs) and are posted on the United Nations Website on the Internet at the following address: http:\\www.un.org. The United Nations Home Page receives 750,000 hits per week.

68. The multimedia approach of the Department also entails radio and television programmes; press conferences, press briefings and special events; exhibits; media outreach activities; activities with education organizations and NGOs; and public services for visitors. The Department continues to stress the rights of the child and the issues of crime prevention and criminal justice in its 15-minute and half-hour radio and television programmes which are produced regularly by the Department in a variety of languages. The Department produces "UN in Action" television programmes on human rights issues for use on the Cable News Network (CNN) weekly programme "World Report", which is seen in 90 countries.

69. The United Nations Information Centres and Services focus on the issue of the rights of the child in their activities. Following are a few examples of activities undertaken in the field:

(a) UNIS Geneva is participating in a special initiative by the Committee on the Rights of the Child to promote awareness of child rights in the media. More recently, UNIS has worked with the Chair of the Committee to enhance coverage of the Committee's proceedings;

(b) UNIC Brazzaville and the Association for Assistance to Incarcerated Infants and Mothers organized an essay competition among secondary school students to raise awareness of human rights issues. On Human Rights Day 1996, the Centre organized a ceremony for the presentation of the prize for the winning essay;

(c) UNIC Bucharest assisted the Ministry of Interior with the publication of a Universal Declaration of Human Rights poster and of books entitled Code of Conduct for Law Enforcement Officials and Human Rights and the Activity of the Public Order Forces;

(d) The Director of UNIC Buenos Aires participated in a seminar, "Constitutional reform and human rights: its influence on the Penal Code", organized by the Domestic Affairs Ministry.

III. INFORMATION RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

League of Arab States

[Original: English]
[10 September 1997]

70. The position and views of the League of Arab States on the subject of children and juveniles in detention are embodied in the "Model Law on Juvenile Delinquents or Potential Delinquents", adopted by the Council of Arab Ministers of Justice at its twelfth session (resolution 226/125 of 19 November 1996), which deals with all aspects of this matter. This Model Law emphasizes the need to protect juvenile delinquents or potential delinquents and specifies the procedures that must be followed, in the form of welfare or reform measures, to protect them, showing due regard for the juvenile mentality. The Model Law also regulates juvenile justice. Some of its articles, which show the extent of the Arab States' concern and consideration for children and juveniles, are quoted below.

71. Article 3 of chapter I, concerning measures and penalties, stipulates that: "No one shall be liable to prosecution if he was under seven years of age at the time of the offence. If he is in a situation that threatens his well-being, his morality or his upbringing, he may be subjected to one of the welfare measures provided for in article 5 of this Law".

72. Article 4 stipulates that: "If a juvenile over 7 but under 15 years of age commits an offence, he shall be liable only to the welfare or reform measures provided for in this Law".

73. Article 5, concerning welfare measures, stipulates that: "A juvenile may be placed in the custody of any of the following persons who meet the moral requirements and are capable of ensuring the juvenile's welfare:

1. One or both parents;

2. The legal or testamentary guardian;

3. A family member or relative;

4. A foster family which undertakes to ensure the juvenile's welfare".

74. Article 20 of chapter II, concerning juvenile justice, stipulates as follows:

"(a) A juvenile may be examined or tried only in the presence of his guardian or a person acting as such or a representative of the Office of Social Services.

"(b) A juvenile may be tried for a felony only in the presence of a lawyer appointed by his family. In cases involving misdemeanour, the court may, if it deems appropriate, appoint a lawyer to defend him."

75. Article 21 stipulates that: "Civil action shall not be brought directly before a juvenile court; they can be brought only in conjunction with a criminal action".

IV. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Howard League for Penal Reform

[Original: English]
[7 April 1997]

76. The Howard League believes that the United Kingdom Government's submission, contained in the report of the Secretary-General (E/CN.4/1997/26), omits important information. In response, the League makes the following comments.

77. There has been an increase in the use of custody for juveniles in recent years, suggesting a trend away from using custody as a last resort. The

use of detention pending trial of young people aged 15 to 17 increased by 40 per cent between 1992 and 1995 in England and Wales. The use of custody for convicted juveniles similarly increased by 34 per cent.

78. In a recent Howard League project set up to rescue 15-year-olds from prison custody, it has been disclosed that, over the period January 1994 to September 1996, 25.5 per cent of the inmates had no previous convictions when they were sent to prison.

79. Conditions for those on remand have deteriorated with many instances of two young people being put in a cell designed for one. A similar deterioration in the regime means that 15- and 16-year-old teenagers on remand can spend as much as 22½ hours a day in their cells and receive little or no education even if they are of compulsory school age. For example, in one juvenile remand unit located in a large Young Offenders Institution (YOI hereinafter) on 10 March 1997, out of 57 15- and 16-year-olds being held, up to 40 were of compulsory school age. However, there were only eight education places available, each one providing only 1½ hours of education per day (7½ hours per week); the rest received no education. Except for eight boys who had jobs on the unit, the remaining boys spent between 21 and 22½ hours in their cells.

80. Bearing in mind rule 13.5 of the Beijing Rules, the Howard League believes juveniles are not given the necessary care, protection or individual assistance whilst in custody. Most are kept either in Young Offender Institutions or adult prisons with juvenile units. YOIs are prisons in all but name: they are run and staffed by the Prison Service whose principal task is to secure and control the inmates. Their design is the same as adult prisons and their rules closely mirror Prison Rules for adults. Bullying is endemic and many of the young people are at risk of self-harm and suicide. Reference is made to the Howard League reports "Banged up, Beaten up, Cutting up" (1995) and the "The Howard League Troubleshooter Project" (1997).

81. Whilst at the present time children aged 12-14 are held in special children establishments, the Government plans to sentence this age-group to new Secure Training Centres (STC) from April 1998. STCs will not be child-care establishments but prisons staffed mainly by custody officers with little or no training in dealing with children. Children sent to an STC will have been the subjects of a Secure Training Order. They will spend a minimum of three months and a maximum of one year in the Centre.

82. The Howard League believes that the Secure Training Order may contravene article 37 (b) of the Convention on the Rights for the Child, which states that the detention of a child should be seen as a last resort and, if used, should be for the shortest appropriate period of time.

83. Behavioural programme in YOIs to help teenagers deal with drug addiction, offending behaviour and anger management are limited and there are not enough places available for all the young people who are in need of this kind of help.

84. Lastly, the Howard League remains concerned at the practice of holding girls aged under 18 in adult prisons with no special units.

V. CONCLUSIONS

General considerations

85. As with last year's report (E/CN.4/1997/26), it should be noted at the outset that the main international instruments concerning juvenile justice, namely the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, are a constant source of inspiration for the drafting of national legislation and remarkable attempts have been made to respect their provisions and to ensure consistency.

86. Poor economic conditions are the main obstacles to the establishment of an effective juvenile justice system, but are obviously not sufficient to explain the gap between the contents of international and national legislation and their implementation. Where the economic situation does not allow investments of economic and human resources to be made in the field of juvenile justice, multilateral cooperation should intervene. Although some countries openly ask for technical and economic assistance, this kind of support still appears to be sporadic and marginal.

87. The field of juvenile justice continues to be the ground for reforms: new legislation, national and international plans, special policies and strategies are constantly being introduced. At the national level, there is often a certain confusion due to the apparently inconsistent actions of law-making and law-implementing bodies. The positive aspect of this hectic activity is that several initiatives, such as the establishment of Children's Ombudsmen and free legal help, are flourishing.

88. From a juridical point of view, it should be noted that, while in camera proceedings to safeguard the child's welfare are more common than in the past, the so-called "abnormal situation doctrine" or "irregular situation doctrine" is still very popular. The "abnormal situation doctrine" allows the incarceration of minors on the ground that they are individuals at risk because of their social habits. This sort of preventive measure, which stems from antiquated bio-anthropological theories and finds its raison d'être in societies where the poor and the marginal are particularly discriminated against and doomed to a perennially servile condition, is a blatant violation of human rights and contravenes the provisions and the spirit of the Convention on the Rights of the Child.

Age of criminal responsibility

89. According to the replies received, the age for criminal responsibility is still one of the most controversial issues: the variety of ages in relation to criminal liability, detention and length of detention, detention pending trial and type of rehabilitation does not match with the provisions of the Convention on the Rights of the Child, especially its article 40, and the ad hoc international instruments on juvenile justice. Complicated legislation does not help respect the rights of the child and eventually creates

discrepancies in the treatment of juveniles; paradoxically, the availability of financial resources and/or a long national juridical tradition in the field of juvenile justice tend to have a negative influence in the rationalization of the justice system. Spending up to 12 months in a special institution, which is nothing more than a low-security jail, at the age of 12 can be a devastating experience.

Detention pending trial

90. The risks and the consequences of arrest and detention pending trial appear to be underestimated. Juveniles can be exposed to authorities' violence, which is still tolerated in certain countries, and to hardened criminals' attention which could transform the juvenile's stay into a life-long nightmare. Therefore, it should be recalled that it is imperative that the period in detention facilities pending trial be as short as possible, and that the mental and physical security of the juvenile be guaranteed. Bearing in mind that detention is always a measure of last resort, special detention facilities for juveniles awaiting charge and trial should be built if they are not available. It is evident that facilities for detainees pending trial cannot be the same as the ones used for convicted juvenile offenders. Finally, the contents of paragraph 2 (b) of article 10 of the International Covenant on Civil and Political Rights should be reiterated: "Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication".

Institutional and non-institutional treatment

91. Non-institutional treatment is one of the basic issues of modern, child-oriented, juvenile justice systems: article 40 of the Convention on the Rights of the Child, in its paragraph 4 reads *"A variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care should be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."* The timely implementation of such measures could effectively prevent juveniles to become petty delinquents and, at the very end, it will allow the society to save costs due to criminal activities.

92. Concern has been expressed at the various deficiencies of institutional treatment. First of all, the principle that detention must be a measure of last resort is often not respected. Second, juvenile centres, like adult detention facilities, are usually affected by negative phenomena which represent a constant danger for the juvenile. Violence, promiscuity, poor health conditions, overpopulation, and lack of rehabilitation and educational programmes appear to be widespread violations of the rights of detainees.

Separation of adults and juveniles

93. Juvenile detention facilities do not exist in a number of countries and juveniles are incarcerated in the same premises as adults. It has happened that observance of the principle of separation has to be negotiated between

the local government, which is often responsible for the management of detention facilities, and the central authority. It is worth repeating that the principle of the separation of adults and juveniles, as provided in article 10 of the International Covenant on Civil and Political Rights and article 37 of the Convention on the Rights of the Child, is one of the most important pillars of an effective juvenile justice system and should be guaranteed in order to avoid violence and the development of the phenomenon of prison as a "school of crime".